

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

KANSAS CITY SCHOOL DISTRICT)	
)	
Petitioner,)	
)	
v.)	Public Case No. UC 2001-030
)	(Cross Reference No. R 1996-010, and
KANSAS CITY FEDERATION OF)	UC 2001-020)
TEACHERS, LOCAL 691)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 2000. The matter before the State Board of Mediation arises from the filing by the Kansas City School District (hereinafter referred to as the District) of a petition for clarification of a bargaining unit established by a previous decision of the State Board of Mediation. The respondent in this case is the Kansas City Federation of Teachers, Local 691 (hereinafter referred to as the Union). In its original petition, the District sought to include in the bargaining unit 79 job classifications. In its original petition, the District also sought to exclude 83 job classifications from the bargaining unit. Prior to the hearing, the parties reached stipulations regarding all but eight of the job classifications in question.

A two-day hearing on this matter was held on March 26, 2001 and March 27, 2001, in Kansas City, Missouri, at which representatives of the Union and the District were present. The case was heard by State Board of Mediation Chairman John Birch, Employee Member LeRoy Kraemer, and Employer Member Robert Douglass. At the hearing, the parties were given full opportunity to present evidence and make their arguments. During the hearing, the District and the Union reached a further stipulation concerning the job classification of Records Management Technician. Following the hearing, the parties were given an opportunity to file

briefs. Both parties filed briefs in this matter. After a careful review of the evidence and the arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Background on District

The District is a public school district within the State of Missouri. In 1977, the District, the members of the Kansas City School Board, and some of the school children brought suit in federal court against the State of Missouri and other defendants alleging that they “had caused and perpetuated a system of racial segregation within the [District].” The Federal court realigned the District as a defendant and, after a trial, held the District and the State jointly and severally liable. In 1984, the federal court ordered that both the District and the State prepare a plan to establish a unitary school system. The federal court established a desegregation plan and created a monitoring committee to monitor the implementation of the desegregation plan. As part of the desegregation plan, the federal court ordered substantial capital improvements in the District.

On May 28, 1996, the State Board of Mediation certified the Kansas City Federation of Teachers, Local 691, AFT, as the exclusive bargaining representative of all the employees in “an appropriate unit consisting of all regular full-time employees, including professional employees, of the Kansas City School District as described in Schedule A; excluding the classifications described in the attached Schedule B, and all other employees of the Kansas City School District.” Employees in 108 job classifications were included in the bargaining unit and employees in 53 job classifications were excluded from the bargaining unit. This bargaining unit is referred to as the “professional and technical unit” and included the Food Service Accounting Technician, the Staging/Move Coordinator, the CADD System Engineer, the

Operations Technician, the Coordinator of Community Use Facilities, the Payroll Systems Support Technician, and the Accounting Technician.

On April 26, 1996, the State of Missouri filed in the federal court a "Motion for Declaration of Unitary Status, Dissolution of all Injunctions, and Relinquishment of Jurisdiction" from the federal court's desegregation order. On May 21, 1996, the State and the District entered into an agreement in which the State agreed to pay an additional \$314 million in desegregation funding to the District over a three-year period. The Court also ordered the State to pay an additional \$6 million in desegregation funding to the District. Upon Court approval of the agreement and payment of the \$320 million, the State would be entitled to an order dismissing it from the federal court action. On March 25, 1997, the federal court entered its order approving the agreement between the District and the State and granting, in part, the State's Motion for Unitary Status. In its order, the federal court instructed the District to trim its budget so that it could be entirely self-sufficient within three years. The federal court further ordered the District to file a transition plan.

The School Board approved a transition plan that was filed with, and subsequently approved by, the federal court. The transition plan required the District to cut \$55 million from its budget by the 1999-2000 school year. To achieve the stated budget reductions, some schools were closed. Some magnet schools were also eliminated as the District transitioned to neighborhood schools. Additionally, 785.3 employee positions were eliminated and approximately 500 employees of the District were laid off. Of the 785.3 employee positions eliminated, 482.9 of these positions were non-instruction or central administration positions. As a result of the elimination of employee positions and lay-offs, many of the remaining employee positions were restructured and given additional job duties. Of the 108 job classifications included in the bargaining unit certified by the Board on May 28, 1996, 49 of those job classifications were eliminated.

Food Service Financial Analyst

Brenda Leach is the Director of Food Service for the District. As Director of Food Service, Ms. Leach is responsible for administration of the District's food programs including breakfast, lunch, snacks, and catering. Ms. Leach is also responsible for writing menus, interpreting regulations, and dealing with staffing issues. Ms. Leach is on the District's labor-relations negotiation team which negotiates with the food service employees. Ms. Leach reports to the District's Chief Finance Officer.

In 1996, the District had within its Food Service Department a Business Manager. The Business Manager assisted Ms. Leach in the direction and management of the District's food programs. The Business Manager also assisted with the preparation of the Department's budget. At that time, the Business Manager supervised the Food Service Accounting Technician, Analee Brown.

In 1996, the Food Service Accounting Technician performed bookkeeping functions for the various schools. The Food Service Accounting Technician accounted for revenues from the food programs, assigned those revenues to the appropriate schools, and accounted for expenses for the food programs by ensuring that the expenses were properly assigned to the various schools. The Food Service Accounting Technician also made reports as directed by the Business Manager. At that time the Food Service Accounting Technician's salary was in the low 20's.

During the District's downsizing, the Business Manager's position was eliminated. After the elimination of the Business Manager's position, the Director of Food Service received assistance from the District's Budget Department in developing the budget for the Food Service Department. In the fall of 1999, the job duty of assisting with development of the Department's budget was given to Analee Brown, the Food Service Accounting Technician. Other job duties were also given to her. However, Ms. Brown continues to perform her former job duties of

accounting for the revenues and expenses of the District's food programs. In June 2000, her title was changed to Food Service Financial Analyst. Ms. Brown's position was also elevated to administrative level 62 with a pay range of \$32,027 to \$35,458. This change in title and increase in pay was made retroactive to January 4, 2000. The Food Service Financial Analyst is an exempt position for purposes of the Fair Labor Standards Act. Currently, Ms. Brown reports directly to the Director of Food Service.

The Food Service Financial Analyst position provides administrative assistance in the financial management and operation of the District's food programs. Job duties include assisting with the direction and management of the District's food service programs in compliance with federal, state and local regulations. The Food Service Financial Analyst also assists with the preparation and implementation of the department's budget and implementation of the financial management system. She is responsible for evaluating the food service unit of each school to determine its efficiency and effectiveness in achieving financial goals. Additionally, she is responsible for preparing and monitoring purchase requisitions for the school cafeterias and the central office. She assists with accounts payable that relate to the District's food programs. The Food Service Financial Analyst prepares financial reports and analysis of food service financial statements for District management. She also provides District management with information from the J. D. Edwards accounting system regarding payroll, purchasing, payables, receivables and budgetary control. In addition, she provides the various cafeteria managers with accounting and business information regarding the vending service. As Food Service Financial Analyst, Ms. Brown monitors and coordinates the payroll activities of the department and the various school cafeterias. She also assists in the development of a department cost manual regarding food cost, non-food cost, indirect cost, and labor cost. Additionally, she assists with the management and control of inventory. Finally, as noted previously, Ms. Brown continues to perform her previous job duties of accounting for the

revenues and expenses of the District's food programs.

As part of her duties to assist in the development of the department's budget and cost manual, Ms. Brown is occasionally asked by the Director of Food Service to compare labor-relations negotiation proposals to projected budgets to determine if the proposals are financially feasible for the department. Ms. Brown does not formulate such proposals.

The District also created within the Food Service Department the position of Food Service Fiscal Monitor. The Food Service Fiscal Monitor is an exempt position for purposes of the Fair Labor Standards Act. This position is responsible for monitoring the cash collection procedures in the various schools. While the position exists, it is only partially filled. The Food Service Department is sharing an employee with another department in the District. The shared employee was already a full-time employee of the District and the Food Service Director made the decision to bring this person into the Food Service Department on a part-time basis. At the time of the hearing, the Director of Food Service set the schedule for this shared employee. However, it is anticipated that sometime in the future, the Food Service Financial Analyst will supervise the Food Service Fiscal Monitor. Ms. Brown will be able to make recommendations regarding the hiring, firing, and discipline of the Food Service Fiscal Monitor. At sometime in the future, Ms. Brown will be able to make work assignments and set the schedule for the Food Service Fiscal Monitor.

Staging/ Move Coordinator

As for the position of Staging/ Move Coordinator, it appears that the position resulted from the District combining the former positions of Staging Coordinator and Move Coordinator. As a result of the federal court desegregation order, the District embarked upon an extensive Capital Improvement Program in which it built new buildings and repaired and renovated a number of the existing buildings. The District, in conjunction with some private companies, set up a Project Management Team to oversee the Capital Improvement Program. There were

also District Project Managers that assisted the District with budget control, on-site control, site selection, and architectural selection. At any one time, the District would have 10 to 13 buildings being renovated or under construction. In order to repair or renovate an existing building, the contents of the building would be moved to an annex. The Staging Coordinator was responsible for coordinating these moves.

In 1996, one of the Project Managers, Joyce Morrison, served as the Staging Coordinator for the District. As Staging Coordinator, Ms. Morrison, was a salaried employee of the District and exempt for purposes of the Fair Labor Standards Act.

The Staging Coordinator was responsible for making sure everything was ready to move. The Staging Coordinator developed and administered a large budget that was used to pay for the services necessary to accomplish these moves. At that time, the Staging Coordinator did not supervise any employees.

As the District neared completion of its Capital Improvement Program, the job of Staging Coordinator became a half-time job. In 1998, the District's Lead Educational Planner was assigned the job duties of the Staging Coordinator. The Lead Educational Planner performed the duties of the Staging Coordinator for approximately a year and a half. During this time, the Lead Educational Planner developed and administered the Staging Coordinator budget. The Lead Educational Planner did not supervise any employees.

In 1999, the Lead Educational Planner became the Chief Operating Officer for Facilities. The Lead Educational Planner position was eliminated and the duties of the Staging Coordinator were combined with those of the Move Coordinator.

In 1996, Shelia Coleman was the Move Coordinator for the District. She worked in the District's Warehouse. She was responsible for the timely completion of the moves planned by the Staging Coordinator. At that time, the District was paying its teachers a stipend to pack items in their classrooms for moving. Ms. Coleman trained the teachers and other District

personnel how to properly pack these items. As the Move Coordinator, Ms Coleman was a salaried employee of the District and exempt for purposes of the Fair Labor Standards Act.

In 1997, all 19.3 employee positions in the Warehouse, including the Move Coordinator position, were eliminated. Thereafter, the job duties of the Move Coordinator and the Staging Coordinator were combined into the current position of Staging/Move Coordinator. Shelia Coleman was hired as the Staging/Move Coordinator.

The Staging/Move Coordinator reports to the Chief Operations Officer for Facilities. The position requires a high school diploma and five years experience in moving and storage operation. It is also preferred that the individual hold a commercial drivers license. The Staging/Move Coordinator is a salaried employee of the District and is an exempt employee for purposes of the Fair Labor Standards Act. The Staging/Move Coordinator is responsible for coordinating the movement and temporary storage of furniture, equipment, and material to and from schools and other facilities within the District. She acts as the liaison between the schools, inside move teams, and outside moving vendors to facilitate orderly moves. Additionally, she is responsible for maintaining records of all moves and maintaining all property asset records for District moving. She is also responsible for maintaining accurate accounts with regard to all moves, including the processing of invoices. The Staging/Move Coordinator orders many of the supplies used during moves. Additionally, the Staging/Move Coordinator assists the Chief Operations Officer for Facilities in developing the District's annual staging budget. Currently, the District's staging budget is approximately \$350,000 per year. The Staging/Move Coordinator does not have the authority to hire or fire District personnel.

The Staging/Move Coordinator works eight hours a day five days a week, but during moves she will work an additional four or five hours per day. During the school year, she may average two long workdays per week. During heavy moving times, she may work three or four long days per week. However, there are periods of time during the year when no moves occur

within the District.

During her normal eight-hour workday, the Staging/Move Coordinator does not supervise any employees. During her normal workday, the Staging/Move Coordinator plans or stages moves. The Staging/Move Coordinator coordinates with the Capital Improvement Program Managers to ensure the “scope of work” for each school move is clearly defined. She meets with School Principals, Site Coordinators, Educational Planners, and the District’s Purchasing Department in preparation for school moves. She ensures adequate packing materials such as boxes and labels are provided to each school. She schedules site visits with the move vendor and coordinates vendor movement plans with school officials and Project Managers. She obtains layouts of the effected schools and provides those layouts to the moving vendor. Additionally, she coordinates with the moving vendor and other appropriate departments on the assembly and disassembly of furniture and equipment to be moved. She provides the Chief Operations Officer for Facilities with a copy of the vendor’s move plans and provides his office with daily status reports. She coordinates with the District’s Purchasing Department on all drop shipments to schools to ensure that no conflicts in delivery develop.

The Staging/Move Coordinator also works with the District’s Security Department in moving high tech equipment. District Security Officers are on site whenever high tech equipment is moved. The high tech items are inventoried (generally by use of a scanner) as they are removed from the room and placed on the truck. The Staging/Move Coordinator is responsible for keeping track of the inventoried items during the move. The Security Officers and the Staging/Move Coordinator follow the truck to its destination in separate cars. Once at their destination, the high tech items are again inventoried as they are removed from the truck and placed in the new room.

Each year the District, through the School Board, enters into a contract with an outside moving vendor. If the District does not have sufficient resources to perform a move, the

Staging/Move Coordinator contacts the outside vendor to request additional personnel and trucks. The Staging/Move Coordinator has the authority to contact the outside vendor without receiving the prior approval of the Chief Operations Officer for Facilities, but she must inform him that she has contacted the outside vendor.

The Staging/Move Coordinator will inform the outside vendor of the job assignment. While the outside vendor brings its own on-site supervision, the Staging/Move Coordinator is required to remain on site to receive the vendor during pick-ups and deliveries. The Staging/Move Coordinator is also responsible for monitoring the vendor's activities to ensure that the move is conducted in accordance with the established plan. The Staging/Move Coordinator reviews vendor invoices to ensure all charges are paid at the contract rate.

In addition to using an outside moving vendor to perform necessary moves, the District also utilizes in-house District move teams. These in-house move teams are comprised of full-time District custodial and maintenance personnel. An in-house move team will be assembled to accomplish a particular move. Each in-house move team consists of twelve individuals. The District finds that this is a method by which custodial and maintenance personnel can earn some overtime. Additionally, the custodial and maintenance personnel know the District's facilities and are able to manage unexpected matters such as broken furniture or equipment. The regular rate of pay for the District's custodial and maintenance personnel is \$12.50 to \$13.00 per hour. However, when working overtime, their rate of pay increases. These custodial and maintenance employees are non-exempt personnel for purposes of the Fair Labor Standards Act.

While the Staging/Move Coordinator makes recommendations to the Chief Operations Officer for Facilities as to which individuals to place on a particular move team, the ultimate decision rests with the Chief Operations Officer for Facilities. However, the District's custodial and maintenance personnel are covered by a union agreement, and it appears that the

selection of individuals for move teams is largely governed by the union agreement. In accordance with the union agreement, District custodial and maintenance personnel are selected for overtime in order of seniority. Therefore, the District maintains a seniority list within each job classification, and in-house move team members are selected in order of seniority from these lists. The composition of the in-house move team will depend upon the requirements of the particular move. One of the District's building mechanics is usually placed on a move team. Workers with other specialties, such as plumbing, will be placed on a move team when considered necessary.

The Staging/Move Coordinator remains on site with the in-house move team during the move. The Staging/Move Coordinator has authority to assign duties to individuals on the move team and she can change those duties, as she deems necessary. On site, the Staging/Move Coordinator does not actually perform any of the moving. Instead, the Staging/Move Coordinator will perform other duties such as inventorying items and performing paperwork. While the move team is in route to a location, the Staging/Move Coordinator does not ride in the truck with the move team. She will follow the move team to the location in her own vehicle. If an individual does not perform well on a move team, the Staging/Move Coordinator can recommend that the individual not be placed on another move team. However, the Chief Operations Officer for Facilities ultimately makes that decision.

Network Manager

In 1996, there existed an Engineering Department within the District's Maintenance, Operations, Security, and Engineering Division. The Engineering Department was staffed with two District Engineers, three Project Managers, and one Computer Aided Design and Drafting (CADD) System Engineer. In 1996, James Butch Harris was the CADD System Engineer. He reported to the Associate Superintendent for Maintenance, Operations, Security, and Engineering.

In 1996, the Engineering Department produced drawings and documents for a variety of District projects. The Engineering Department had eight to ten computers, a printer, and a server networked together to accomplish this task. The CADD System Engineer was responsible for coordinating and performing computer related duties for the Engineering Department. Specifically, the CADD System Engineer worked with independent architects, District maintenance personnel, and Project Managers to produce, revise, and file CADD drawings. The CADD System Engineer worked with District Capital Improvement Program personnel to coordinate drawing reviews and to ensure the proper construction documents were filed electronically and in hard copy form. He also assisted with developing and maintaining an engineering and drawing library. Additionally, he was responsible for developing and maintaining an integrated Computer Aided Facilities Management system (CAFM). This included setting up data bases to provide statistical information for each District facility. The CADD System Engineer was responsible for providing, through the use of standard PC Computer programs, such items as project cost tracking and project schedules. Finally, the CADD System Engineer assisted with project specification development by performing field walk-downs.

During the District's downsizing in 1997, the two District Engineer positions and the three Project Manager positions were eliminated. At that time, the CADD System Engineer position was transformed into the current Network Manager position. Currently, James Butch Harris is the Network Manager. He reports to the Chief Operations Officer for Facilities.

The District has a decentralized computer system consisting of approximately 500,000 computers. Each Division within the District has its own computer system and network managers. All of the Divisions' computer systems are connected through the District's AS-400 computer. The computer system in the District's Maintenance Operations and Security Division consists of 75 to 80 computers and 75 to 80 printers, as well as several servers and large

architectural printers. The Network Manager is responsible for maintaining this computer system. He is also responsible for maintaining the Division's network with the District through the AS-400. Additionally, the Network Manager is responsible for maintaining Security's computer system that controls the fire and security alarms in all of the District's buildings.

The District contracts with a private company, Service Master, to provide management and consulting services to the District in the areas of maintenance and operations. The Network Manager is responsible for maintaining the computer system for Service Master. Within the Service Master system is the Isis maintenance work order computer system. If a maintenance problem arises in one of the District's buildings, a District employee located in the building can type a work order on the computer, and through the Isis system, that work order will be instantly transmitted to District maintenance. The Network Manager is responsible for maintaining the Isis computer system.

The Network Manager is also responsible for updating the Division's computer programs and installing new programs on the Division's computers. The Network manager also makes recommendations concerning the replacement of computer programs and equipment. Additionally, he repairs and replaces computer equipment.

The Network Manager has access to all of the computers and computer programs in the Division. He has access to all information stored on the computers' hard drives. He can access all of the District's computers through the District's AS-400. The Network Manager is on call 24 hours per day and has after-hours access to the District's buildings.

The Chief Operations Officer for Facilities is on the District's negotiation team when it negotiates with SEIU, Local 12. The Chief Operations Officer for Facilities assists with the preparation of labor-relations presentations and negotiation proposals. He sends and receives confidential communications, including e-mails, concerning labor-relations matters. Since the Network Manager has the access codes to the Chief Operations Officer's computer, the

Network Manager would have access to any of the labor-relations information stored on the computer's hard drive. However, it is not a job duty of the Network Manager to access or review labor-relations material stored on the hard drives of District employees' computers. Additionally, the Network Manager has never been asked to assist in formulating labor-relations negotiation proposals. While the Chief Operations Officer for Facilities has used the Network Manager as a sounding board with regard to grievances, this is not a part of the Network Manager's job duties and the Chief Operations Officer for Facilities never discloses the name of the grievant. Lastly, the Chief Operations Officer for Facilities is not aware of any occasion on which the Network Manager has accessed or misused confidential labor-relations information.

Accounting/Payroll Technician

In 1996, within the District's Maintenance, Operations, Security, and Engineering Division, there was a Financial Officer position, a Payroll Technician position, and an Operations Technician position. At that time, the duties of the Operations Technician included collecting time cards, inputting payroll data, verifying the accuracy of the payroll data, and transmitting the payroll data to the District's Payroll Department.

During the District's downsizing, the Financial Officer position, the Payroll Technician position, and the Operations Technician positions were eliminated. The elimination of these positions hindered the Division's ability to provide accurate payroll information to the District's Payroll Department in a timely manner. Therefore, the position of Accounting/Payroll Technician was created within the Division. Currently, Judith Thornton is the Accounting/Payroll Technician. Ms. Thornton reports directly to the Chief Operations Officer for Facilities.

The Accounting/Payroll Technician's current job duties include collecting and processing payroll data for the District employees within the Division. Additionally, the Accounting/Payroll Technician analyzes outstanding payroll issues and works with the District's Payroll Department to resolve these outstanding payroll issues to ensure proper and timely payroll processing. She

calculates the Division employees' hours, overtime, mileage, and mileage bonuses. These computations are performed in accordance with set formulas. She maintains and updates the Division employees' vacation balances and sick leave balances. Although she maintains the employees' leave balances, the Accounting/Payroll Technician does not approve or award leave. The Accounting/Payroll Technician's duties also include developing and generating financial and statistical payroll tracking reports, and tracking all regular and overtime payroll. She also prepares all correspondence between the Division and the District's Payroll Department. To accomplish her duties, the Accounting/Payroll Technician has access to the District's Human Resources' file maintained on each Division employee.

The Accounting/Payroll Technician tracks Division overtime expenditures and, therefore, she knows the balance of unexpended overtime funds remaining in the Division's budget. Occasionally, the Chief Operations Officer for Facilities has requested hourly wage information and overtime expenditure estimates from the Accounting/Payroll Technician. However, the Accounting/Payroll Technician does not assist with developing budgets or developing labor-relations negotiation materials.

Coordinator of Community Use Facilities

The District permits community members and organizations to use its buildings for events as long as those events do not interfere with regular school activities. The District's Coordinator of Community Use Facilities is responsible for scheduling community events and making sure those events do not conflict with school activities.

In 1996, the Coordinator of Community Use Facilities was Ganga Venkatarama. She reported to the Associate Superintendent for Maintenance, Operations, Security, and Engineering. At that time, the Coordinator of Community Use Facilities would receive an application of an individual or organization desiring to use a District building for an event and she would forward that application to the appropriate District personnel for approval. Once the

application had been approved, it would be returned to the Coordinator of Community Use Facilities and she would complete the appropriate paperwork.

In 1997, the Financial Officer position within the District's Maintenance, Operations, Security, and Engineering Division were eliminated. Some of the job duties previously performed by the Division's Financial Officer were reassigned to the Coordinator of Community Use Facilities.

Currently, Pamela Markey is the Coordinator of Community Use Facilities for the District. She reports to the Chief Operations Officer for Facilities. As the Coordinator of Community Use Facilities, Ms. Markey answers telephone inquires concerning the community use of District facilities. She meets with applicants, school Principals, District Security, and District Maintenance Operations to coordinate the scheduling of community events in the various District facilities. She maintains a schedule of all such events. Ms. Markey also audit's the applications for the community use of District facilities prior to processing those applications. Additionally, she prepares the necessary contracts and details in those contracts the applicable costs and fees. Ms. Markey is also responsible for writing journal vouchers to record the custodial and security overtime labor associated with each contract for the community use of District facilities. She also collects, records, and prepares the deposits of the fees for community use of District facilities. As the Coordinator of Community Use Facilities, Ms. Markey works directly with Division management and area managers to compile information necessary to calculate the labor costs for the applications. She must ensure contract specifications are written accurately to expedite the costing of applications. Additionally, she develops and prepares financial and statistical reports. Furthermore, Ms. Markey counsels applicants concerning District insurance requirements. She also works with the District's Human Resources Department to plan and schedule work fairs. As the Coordinator of Community Use Facilities, Ms. Markey tracks the amount of time the District's facilities have

been used and she maintains a computerized filing system for the community use of District facilities. She is also responsible for analyzing and resolving outstanding issues and complaints.

The Coordinator of Community Use Facilities receives two or three months advance notice of school closings. This is to prevent the scheduling of community events in school buildings after the date of closure. The District considers this school closure information to be confidential. Accordingly, the Coordinator of Community Use Facilities does disclose school closure information. The Coordinator of Community Use Facilities receives part-time clerical support from two of the District's clerical employees. These clerical employees also have access to this advance school closing information. Interestingly, the District does not contest the inclusion of these clerical personnel in the bargaining unit. It is also important to note that once the District's School Board has approved the closure of a school, that information becomes public record.

The transfer or layoff of District personnel working in the school to be closed is governed by existing District policy or union agreement. However, the District does not negotiate with the Union concerning the closing of schools. Under certain circumstances, the District's Superintendent of Schools can also close schools and transfer the effected school personnel.

Payroll Analyst II

In 1996, the District's Payroll Unit was part of the Accounting Department. At that time, there were a total of eleven employees in the Payroll Unit. Deborah Kohrs was the Payroll Manager and was responsible for overseeing the District's payroll function. In 1996, the Payroll Unit had three lead positions: the Lead Customer Service Technician, the Lead Verification Technician, and the Lead Processing Technician. These lead positions supervised the remaining employees within the unit. The Lead Customer Service Technician supervised the

Payroll System Support Technician. The Lead Verification Technician and the Lead Processing Technician supervised a Customer Service Technician and five Accounting Technicians.

At the end of fiscal year 1996, the Payroll Unit was reorganized and moved to the Human Resources Department. Deborah Kohrs remained the Payroll Manager, but began reporting to the Director of Human Resources Operations. Five positions within the Payroll Unit were eliminated. The three lead positions were eliminated and two of the Accounting Technician positions were eliminated. During the reorganization, the job duties of the three lead positions, except the supervisory duties, were redistributed to the remaining Accounting Technician positions.

Prior to the reorganization, Halina Hendzlik was the Payroll System Support Technician. As the Payroll System Support Technician, Ms. Hendzlik was responsible for providing training to District personnel regarding the submission of payroll information. She documented the payroll procedures and developed training aids to communicate those procedures. She also requested payroll processing editing runs, as required. Once her supervisor approved a change in the payroll processing procedure, Ms. Hendzlik would forward a written request to the computer programmers to make the payroll processing change. She was also responsible for trouble-shooting payroll processing problems and collecting and summarizing the payroll inquiries received each payday.

Prior to July 1999, the Payroll Unit did not run its own payroll reports. If they had a payroll job, they would submit it to the computer room and the computer room would run the payroll reports. However, in July 1999, the District installed the J.D. Edwards accounting system. With the installation of the new accounting system, Ms. Hendzlik's job duties increased. The Payroll Unit began running their own payroll reports and the support functions previously performed by the Computer Programmers were transferred to Ms. Hendzlik's position. The District is changing Ms. Hendzlik's job description and job title to reflect this

increase in job duties. Upon receiving final approval, Ms. Hendzlik's new job title will be Payroll Analyst II.

Ms. Hendzlik now processes the complete payroll from start to finish. She prepares documents that are used throughout the District for payroll processing. These documents include time reports, payroll schedules, and procedures. She is also responsible for updating these documents to ensure that current material is available to all personnel responsible for processing payroll. Additionally, she analyzes time data entered by all locations and coordinates with certifying officers to make necessary adjustments to data prior to preparing payroll checks. She examines employee information entered by Human Resources and reports necessary changes to data entry personnel to ensure system integrity. Ms. Hendzlik assists in processing of special payroll documents. Furthermore, she is the primary person responsible for check writing functions. She is also responsible for transmitting direct deposit files to financial institutions. As Payroll Analyst II, Ms. Hendzlik analyzes all payroll correction information submitted to payroll, determines if payment is due, and writes up information for audit and processing. She schedules payment based on department guidelines. Ms. Hendzlik is also responsible for setting up and organizing a filing system for all payroll documents. She also makes suggestions regarding changes to the payroll system to improve system efficiency. She answers employee payroll inquiries. Fifty percent of Ms. Hendzlik's time is spent running payroll jobs.

Furthermore, Ms. Hendzlik performs statistical analysis and training functions. Due to the sophistication of the new J.D. Edwards accounting system, the time Ms. Hendzlik spends training has doubled. As part of her training duties, she is responsible for providing workshops to individuals whose job duties include processing payroll. Ms. Hendzlik prepares written materials and oral presentations on issues required to correctly process payroll documents. She also provides hands-on payroll training and procedure manuals to new employees with

payroll processing duties.

As Payroll Analyst II, Ms. Hendzlik performs research regarding employee grievances. Brenda Thomas, the District's Employee Relations Manager, serves as the grievance-hearing officer at the third step in the employee grievance process. She holds hearings concerning employee grievances and decides those grievances based solely upon the evidence produced at the hearings. A grievant, or a Union business agent representing a grievant, is entitled to obtain from the District information necessary to prosecute the grievance. However, they are not entitled to medical information. In addition, any District employee is entitled, upon request, to his or her payroll information.

If payroll information is introduced in a grievance hearing, Ms. Thomas will ask the Payroll Unit to audit the grievant employee's payroll records to verify the evidence presented or to determine the extent of the grievance. The Payroll Unit may also be asked to make comparisons between employees' payroll records. As the Payroll Analyst II, Ms. Hendzlik has performed this type of research for Ms. Thomas, but such research accounts for no more than ten percent of her time. Furthermore, if the grievance is decided in favor of the grievant employee and the employee is entitled to additional wages, Ms. Hendzlik will process the payment and write the check. However, she neither decides grievances nor consults Ms. Thomas as to how a grievance should be resolved.

The Union files grievances on behalf of the employees in the bargaining units they represent. However, the Payroll Manager could not recall a single instance where the Union had filed a grievance on behalf of the employees in the Professional and Technical bargaining unit. District employees not represented by a union may file complaints. Employee complaints are handled substantially similar to grievances.

As the District's Employee Relations Manager, Brenda Thomas is on the District's labor-relations negotiating team and she participates in all labor-relations negotiations on behalf of

the District. Ms. Thomas also assists with the drafting of District negotiation proposals. In addition, Charlie Collins, the District's Benefits and Compensation Manager, is on the District's labor-relations negotiating team and assists with the preparation of District negotiation proposals. Ms. Thomas and Mr. Collins discuss District negotiation proposals with the Payroll Manager. The Payroll Manager has also assisted Ms. Thomas and Mr. Collins in formulating District negotiation proposals. The Payroll Manager has an office (with a door) where these confidential matters could be discussed.

Unlike the Payroll Manager, the Payroll Analyst II does not assist with the formulation of District negotiation proposals. Furthermore, the Payroll Analyst II has not been asked to provide information concerning District negotiation proposals. However, the payroll staff is located in the main area of the Human Resources Department. It is therefore possible that the Payroll Analyst II could overhear discussions concerning District labor-relations matters.

Payroll Analyst I

In 1996, the Payroll Unit had a Lead Verification Technician and Lead Processing Technician. Prior to the reorganization of the Payroll Unit at the end of 1996, the Lead Verification Technician and the Lead Processing Technician spent a large portion of their time supervising employees. During the reorganization these two lead positions were eliminated. In addition the number of Accounting Technician positions within the Payroll Unit was reduced from five to three. The individuals holding the Lead Verification Technician and the Lead Processing Technician became Accounting Technicians. Another individual was hired to fill the remaining Accounting Technician position.

As the duties of the Accounting Technicians have evolved, the Accounting Technicians have taken on more responsibility for processing the Districts payroll. Additionally, the Accounting Technicians have become more involved in training District personnel regarding payroll-processing procedures. This is particularly true since the District installed the J.D.

Edwards accounting system in July 1999. Furthermore, after the Payroll Unit was moved to the District's Human Resources Department, the Accounting Technicians interfaced with Human Resources personnel daily. The Accounting Technicians also review the employee information sheets the Payroll Unit receives from Human Resources.

With the changes in the Accounting Technicians' duties, the District is changing the Accounting Technicians' job descriptions and job titles. Upon final approval, their new job titles will be Payroll Analyst I's.

Currently, the specific duties of the Payroll Analyst I's include analyzing time data entered by all locations. Payroll Analyst I's coordinate with certifying officers to make necessary adjustments to data prior to preparing payroll checks and they review reports prior to payroll processing. Additionally, they coordinate with all locations to ensure that new hires and terminations are paid correctly. They also coordinate with the employee benefits unit to make sure health and dental deductions are being appropriately withheld. They investigate pay discrepancies that may arise from pre-payroll reports and they set up benefits and accruals on new employees. The Payroll Analyst I's enter all employee withholding allowance information into the payroll system and submit information to the IRS for review based on federal guidelines. Additionally, they comply with federal guidelines each year by making sure that all employees claiming exempt or earned income credit complete new withholding forms for the next calendar year. Payroll Analyst I's are also responsible for processing all court ordered payroll deductions, examining employee information entered by Human Resources, reporting necessary changes to data entry personnel to ensure system integrity, analyzing employee salary information and making salary adjustments due to salary changes, late starts, leave of absences, terminations and severance payments. They are also required to learn the procedures required to setup and run the numerous payroll runs (regular, special, interim). The Payroll Analyst I's calculate wages payable amounts for semi-monthly employees to

appropriately allocate the amount of wages for summer option payments. They also analyze all payroll correction information submitted to the Payroll Unit, determine if payment is due, and write up information for audit and processing. They schedule payment based on department guidelines. They are also responsible for setting-up and organizing a filing system for all payroll documents. The Payroll Analyst I's are expected to make suggestions regarding changes to the payroll system to improve system efficiency and they answer employee payroll inquiries.

At times the Payroll Analyst I's will be asked to perform research for Brenda Thomas regarding grievances. The research they perform is substantially similar to that performed by the Payroll Analyst II. Like the Payroll Analyst II, the Payroll Analyst I's neither decide grievances nor consult with Ms. Thomas regarding how grievances should be decided. Once Ms. Thomas has decided a grievance in favor of an employee, a Payroll Analyst I may be asked to calculate the amount of wages owed to the grievant employee.

Like the Payroll Analyst II, the Payroll Analyst I's do not assist with the formulation of District negotiation proposals and the Payroll Analyst I's have not been asked to provide information concerning District negotiation proposals. However, the Payroll Analyst I's are located in the main area of the Human Resources Department. Therefore, it is possible that the Payroll Analyst I's could overhear discussions concerning District labor-relations matters.

CONCLUSIONS OF LAW

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units. Section 105.525, RSMo. 2000. "Clarifying a bargaining unit, which has previously been determined to be appropriate, is one facet of the general issue of the appropriateness of a bargaining unit. *International Association of Fire Fighters, Local 2543 v. Poplar Bluff Fire Department*, Public Case No. UC 2000-019 (SBM 2000). "It is an aspect of the Board's authority to police its certification." *Id.*

On May 28, 1996, the State Board of Mediation certified the Kansas City Federation of Teachers, Local 691, AFT, as the exclusive bargaining representative of all the employees in “an appropriate unit consisting of all regular full-time employees, including professional employees, of the Kansas City School District as described in Schedule A; excluding the classifications described in the attached Schedule B, and all other employees of the Kansas City School District.” Employees in 108 job classifications were included in the bargaining unit and employees in 53 job classifications were excluded from the bargaining unit. The bargaining unit is known as the Professional and Technical bargaining unit.

However, the District was operating under the supervision of the federal court pursuant to a desegregation order. Under the desegregation order, the District received yearly desegregation funding from the State of Missouri. On March 25, 1997, the federal court entered an order instructing the District to trim its budget so that it could be financially self-sufficient within three years. The District cut \$55 million from its budget by the 1999-2000 school year. In achieving these budget reductions, 785.3 employee positions were eliminated and approximately 500 employees of the District were laid off. Of the 785.3 employee positions eliminated, 482.9 of these positions were non-instruction or central administration positions. As a result of the elimination of employee positions and lay-offs, many of the remaining employee positions were restructured and given additional job duties. Of the 108 job classifications originally included in the Professional and Technical bargaining unit, 49 of those job classifications were eliminated.

It is undisputed by the parties that this case presents substantially changed circumstances which warrant a review and clarification of the bargaining unit. See, *International Association of Fire Fighters, Local 2543 v. Poplar Bluff Fire Department*, Public Case No. UC 2000-019, at 10 (SBM 2000). However, there is a dispute among the parties as to whether or not the job duties of the job classifications in question have undergone substantial change.

Where a class of employees has been expressly included in a bargaining unit, the Board will not subsequently consider the exclusion of that class of employees from that unit unless the job duties of the employees in that class have undergone substantial change. *Department of Corrections and Human Resources v. Missouri State Council 72, AFSCME*, Case No. UC 89-003, at 15-16 (SBM 1989). “A substantial change in the duties of a class of employees is one which alters the basic nature of their job.” *Id.* at 16.

Discussion of the Supervisor Exclusion

In 1996, the Food Service Financial Analyst (formerly the Food Service Accounting Technician) and the Staging/Move Coordinator had no supervisory job duties and were included in the Professional and Technical bargaining unit. However, the District maintains that the job duties of the Food Service Financial Analyst and the Staging/Move Coordinator have undergone substantial change and that the positions are currently supervisory positions. Therefore, the District maintains that the Food Service Financial Analyst and the Staging/Move Coordinator should be excluded from the bargaining unit. A review of the evidence in this case demonstrates that the Food Service Financial analyst and the Staging/Move Coordinator are not supervisors and they should not be excluded from the bargaining unit.

An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a “clear and identifiable community of interest.” However, this Board and the courts have consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. *International Association of Firefighters, Local 2665 v. City of Kirkwood*, Case No. R89-024 (SBM 1989); *MNEA Springfield Education Support Personnel v. Springfield R-12 School District*, Case No. UC 88-021 (SBM 1988); and *St. Louis Fire Fighters*

Association, Local 73 v. City of St. Louis, Case No 76-013 (SBM 1976). See also, *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d 581 (Mo. App. 1977). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise. This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
3. The number of employees supervised and the number of other persons exercising greater, similar, and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.¹

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

Food Service Analyst

As for the Food Service Financial Analyst, it is clear that this position does not currently perform any supervisory duties. The District anticipates that the Food Service Financial Analyst will, sometime in the future, supervise the Food Service Fiscal Monitor. However, currently, the Food Service Fiscal Monitor position is only partially filled. The Food Service Department is

¹ See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).

sharing an employee with another Department in the District. The shared employee was already a full-time employee of the District and the Director of Food Service made the decision to bring the individual into the Food Service Department on a part-time basis. At the time of hearing, the Director of Food Service set the schedule for the shared employee. Since the Food Service Financial Analyst does not currently perform any supervisory duties, the Food Service Financial Analyst is not a supervisor. *Compare, American Radiator & Standard Sanitary Corporation, Pacific Order Handling Division*, 119 NLRB 1715, 1719 (1958)(Secretary not presently performing confidential duties in not a confidential employee); *See also, Curt Gowdy Broadcasting, Inc. d/b/a KOWB Radio*, 222 NLRB 530, 531 (1976). Therefore, the Food Service Financial Analyst should not be excluded from the Professional and Technical bargaining unit on that basis.

Staging/Move Coordinator

Based upon the evidence adduced at the hearing, it is also clear that the Staging/Move Coordinator is not a supervisor and should not be excluded from the Professional and Technical bargaining unit. The Staging/Move Coordinator works a normal eight hour work day five days a week. During her normal eight-hour workday, the Staging/Move Coordinator does not supervise any employees. However, moves within the District take place during non-school hours and during moves the Staging/Move Coordinator will work an additional four or five hours per day. During the school year, she may average two long workdays per week. During heavy moving times, she may work three or four long days per week. However, there are periods of time during the year when no moves occur within the District. It is the Staging/Move Coordinator's work with the in-house move teams that the District maintains makes the Staging/Move Coordinator a supervisor. Therefore, the Board will apply the supervisory factors set forth previously to the Staging/Move Coordinator's duties with regard to the in-house move

² See, for example, *Monroe County Nursing Home District, dba Monroe Manor*, Case No. R 91-016 (SMB 1991).

teams.

First, the Staging/Move Coordinator does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. The in-house move teams are comprised of full-time District custodial and maintenance personnel. An in-house move team will be assembled to accomplish a particular move. While Staging/Move Coordinator can make recommendations to the Chief Operations Officer for Facilities as to the individuals to be placed on a move team, that process is controlled largely by union agreement. Likewise, if an individual does not perform well on a move team, the Staging/Move Coordinator can recommend to the Chief Operations Officer for Facilities that the individual not be placed on future move teams. However, the ultimate decision as to placing an individual on a move team or removing an individual from a move team is left to the Chief Operations Officer for Facilities. Therefore, the Staging/Move Coordinator does not meet the first factor.

Secondly, it appears that the Staging/Move Coordinator does have authority to direct and assign the individuals on the in-house move teams. She can make work assignments to the individuals and she can changes those work assignments, as she deems necessary. Therefore, the Staging/Move Coordinator does meet the second factor.

As for the third factor, each in-house move team is comprised of twelve full-time District custodial and maintenance employees. The Staging/Move Coordinator does not supervise these employees during their normal workdays. At best, the Staging/Move Coordinator supervises these individuals only two or three nights per week for periods of four or five hours. Additionally, the Chief Operations Officer for Facilities has the ultimate authority over these individuals. Therefore, the Board finds that the Staging/Move Coordinator does not meet the third factor.

As to the fourth factor, the Board cannot find that the Staging/Move Coordinator's level of pay is commensurate with that of a supervisor. While testifying, the Chief Operations Officer

for Facilities could only speculate as to the pay level of the Staging/Move Coordinator. The custodial and maintenance employees that comprise the in-house move teams are regularly paid \$12.50 to \$13.00 per hour. Their overtime rates of pay are higher. Based upon the record, the Board cannot find that the Staging/Move Coordinator meets the fourth factor.

The Board finds that the Staging/Move Coordinator supervises an activity and not the employees. The District uses its custodial and maintenance personnel on the in-house move teams because they know the District's facilities and are able to manage unexpected matters such as broken furniture or equipment. Additionally, at least some of the custodial and maintenance personnel making up the move teams are skilled employees such as mechanics and plumbers. Nothing in the record indicates that the Staging/Move Coordinator would have the skills or ability to give these individuals direction in carrying out their tasks. Further, while the Staging/Move Coordinator is on-site with the move team, she is performing other duties such as inventorying items and completing paperwork. She also does not travel with the move team in the truck, but travels to each location in her own vehicle. Based upon the record, the Staging/Move Coordinator does not meet the fifth factor.

Lastly, it is true that the Staging/Move Coordinator does not perform moving duties, but she spends a portion of her time during the moves inventorying items and performing paperwork. The Chief Operations Officer for Facilities testified that the Staging/Move Coordinator spends sixty percent of her time supervising employees. However, the Board does not find the testimony credible because the Staging/Move Coordinator does not supervise any employees during her normal eight-hour workdays. The Staging/Move Coordinator works with in-house move teams two or three nights a week for four or five hours per night. Therefore, the Board finds that the Staging/Move Coordinator does not meet the sixth factor.

Based upon the record, the Staging/Move Coordinator is not a supervisor within the Missouri Public Sector Labor Law. Therefore, the Staging/Move Coordinator will remain in the

Professional and Technical bargaining unit on that basis. It should be noted, that the Board's decision concerning the Staging/Move Coordinator is consistent with previous decisions of the Board holding that the sporadic assumption of supervisory authority for short periods of time is insufficient to find supervisory status. See, *AFSCME, Local 410 v. City of Festus*, Public Case No. R 99-052, at 10 (SBM 1999); *Professional Fire Fighters of Marshall, Missouri, Local No. 2706, A/W International Association of Fire Fighters v. City of Marshall, Missouri*, Case No. 79-036 (SBM 1980). See also, *Potomac Electric Power Company*, 111 NLRB 553, 560 (1955); *Florence Stove Company*, 94 NLRB 1434, 1437 (1951); and *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985).

Based upon the foregoing, the job classifications of Food Service Financial Analyst and Staging/Move Coordinator are not supervisors and will be included in the Professional and Technical bargaining unit.

Discussion of the Confidential Employee Exclusion

Turning to the issue of whether or not the Food Service Financial Analyst, the Network Manager, the Accounting/Payroll Technician, the Coordinator of Community Use Facilities, the Payroll Analyst II, and the Payroll Analyst I are confidential employees within the meaning of the Missouri Public Sector Labor Law. In 1996, the job classifications of Food Service Accounting Technician, the CADD System Engineer, the Operations Technician, the Coordinator of Community Use Facilities, the Payroll System Support Technician, and the Accounting Technician were not confidential in nature and therefore they were included in the Professional and Technical bargaining unit. However, the District maintains that the job duties of these classifications have undergone substantial change. The District also maintains that the Food Service Financial Analyst (formerly the Food Service Accounting Technician), the Network Manager (formerly the CADD System Engineer), the Accounting/Payroll Technician (formerly the Operations Technician), the Coordinator of Community Use Facilities, the Payroll Analyst II

(formerly the Payroll System Support Technician), and the Payroll Analyst I (formerly the Accounting Technician) are currently confidential employees within the meaning of the Missouri Public Sector Labor Law. However, based upon the record, the Food Service Financial Analyst, the Network Manager, the Accounting/Payroll Technician, the Coordinator of Community Use Facilities, the Payroll Analyst II, and the Payroll Analyst I are not confidential employees and should not be excluded from the Professional and Technical bargaining unit.

As a preliminary point, the Board takes note that only management personnel testified on behalf of the District. Not one of the employees in question testified. The District's failure to produce the employees in question and elicit their testimony raises a presumption or an inference that the employees' testimony would be contrary to the District's position. *See, Block v. Rackers*, 256 S.W.2d 760, 764 (Mo. 1953) and *Graeff v. Baptist Temple of Springfield*, 576 S.W.2d 291, 306 (Mo. banc 1978). The Board is of the opinion that the District has attempted to overstate these employees' involvement in labor-relations matters. Therefore, the Board discounts the District's evidence as to these employees' involvement in labor-relations matters.

As stated above, where a class of employees has been expressly included in a bargaining unit, the Board will not subsequently consider the exclusion of that class of employees from that unit unless the job duties of the employees in that class have undergone substantial change. *Department of Corrections and Human Resources v. Missouri State Council 72, AFSCME*, Case No. UC 89-003, at 15-16. "A substantial change in the duties of a class of employees is one which alters the basic nature of their job." *Id.* at 16.

Although confidential employees are not specifically excluded from the coverage of the Missouri Public Sector labor Law, case law from this Board and the courts have carved out such an exclusion. *Belton NEW/Education Support Personnel v. Belton 124 School District*, Case No. R 94-002 (SBM 1994). The confidential exclusion protects an employer's right to conduct its labor relations through employees whose interests are aligned with those of management,

rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. *Id.* This exclusion means that confidential employees cannot be included in any bargaining unit. *Id.*

To decide whether a particular employee is a confidential employee, the Board applies the labor-nexus test. *Belton NEA/Education Support Personnel V. Belton 124 School District*, Case No. R94-002 (SBM 1994). Under that legal standard, employees who act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations are considered confidential employees. *Id.*

Under the NLRB's labor nexus test it is not sufficient to show that an employee has responsibility for protecting the confidences of management, or has access to confidential information. The test applies only to employees having access to advance information about management's strategy and tactics in labor matters which might be used to the detriment of management.

Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA, 807 S.W.2d 63, 67 (Mo. Banc 1991).

"The essential issue is whether the challenged employees have such a close relation to the district's management of labor relations that the district would be prejudiced by their inclusion in a bargaining unit with other employees." *Id.* at 68. The Board, with its specialized knowledge of employer-employee relations and the "dynamics of collective bargaining in the public sector," makes the determination of whether the employer may be prejudiced. *Id.*

In order to ascertain whether a person is a confidential employee, two determinations must be made under the labor-nexus test. *Parkway Association Education Support Personnel, Local 902/MNEA v. Parkway School District*, Public Case No. R 88-025 at 16-17 (SBM 1989). First, the person for whom the employee works must initially be found to formulate, determine and effectuate labor-relations policy. *Id.* Secondly, should the first test be met, the question shifts to the duties of the particular employee whose inclusion in the bargaining unit is disputed. *Id.* To be excluded, the employee must assist and act in a confidential capacity to a person

who formulates, determines and effectuates labor-relations policy. *Id.*

Based upon the record, the Food Service Financial Analyst, the Network Manager, the Accounting/Payroll Technician, the Coordinator of Community Use Facilities, the Payroll Analyst II, and the Payroll Analyst I job classifications are not confidential employee positions. Therefore, they should be included in the Professional and Technical bargaining unit.

Food Service Financial Analyst

With regard to the Food Service Financial Analyst the first prong of the labor-nexus test is met. The Food Service Financial Analyst reports to Ms. Leach the Director of Food Service for the District. Ms. Leach serves on the District's labor-relations negotiation team which negotiates with the food service employees. The Director of Food Service formulates, determines and effectuates labor-relations policy for the District.

However, the Food Service Financial Analyst does not assist or act in a confidential capacity to a person who formulates, determines and effectuates labor-relations policy. The Food Service Financial Analyst does not meet the second prong of the labor-nexus test. As part of her duties to assist in the development of the Food Service Department's budget and cost manual, the Food Service Financial Analyst is occasionally asked by the Director of Food Service to compare labor-relations negotiation proposals to projected budgets to determine if the proposals are financially feasible for the Department. However, the Food Service Financial Analyst does not formulate such proposals. The critiquing of Union proposals or the providing of personnel or statistical information with regard to contract negotiations does not make an employee a confidential employee. *See, Case Corporation*, 304 NLRB 939 (1991). *See also, The Budd Company*, 136 NLRB 1153, 1155 (1962); *Ethyl Corporation*, 118 NLRB 1369, 1371-72 (1957); *American Radiator & Standard Sanitary Corporation*, 119 NLRB 1715, 1720-21 (1958); and *Low Bros. National Market*, 191 NLRB 432 (1971). Furthermore, once the School Board has approved the District's budget, budget information becomes public information which

is subject to disclosure pursuant to the Missouri Sunshine Law, Sections 610.010, et. seq., RSMo. 2000.

The job classification of Food Service Financial Analyst is not a confidential employee position and it will be included in the Professional and Technical bargaining unit.

Network Manager

Under the labor-nexus test, the Network Manager is also not a confidential employee. The Network Manager reports to the Chief Operations Officer for Facilities. The Chief Operations Officer for Facilities serves on the District's negotiation team when it negotiates with SEIU, Local 12. Therefore, the Chief Operations Officer for Facilities formulates, determines and effectuates labor-relations policy for the District.

However, the Network Manager does not meet the second prong of the test in that the Network Manager does not assist and act in a confidential capacity to a person who formulates, determines and effectuates labor-relations policy. The Network Manager has access to labor-relations information stored on the computer hard drives of the Chief Operations Officer for Facilities and other District employees. It is not a job duty of the Network Manager, however, to access or review such information. The mere ability to access labor-relations information does not make the Network Manager a confidential employee. *Compare, In the Matter of B.G. Goodrich Company*, 92 NLRB 575, 576 (1950) (It was not a job duty of switchboard operator to monitor conversations regarding labor-relations matters). *Compare also, Heckett Engineering Co.*, 117 NLRB 1395, 1396 (1957). Additionally, the Network Manager does not assist in formulating labor-relations negotiation proposals for the District.

While the Chief Operations Officer for Facilities has also used the Network Manager as a sounding board concerning grievances, that practice is not part of the Network Manager's job duties. Further the Network Manager's minor role with regard to grievances, does not make the position a confidential position. *See, Case Corporation*, 304 NLRB 939 (1991); *White Provision*

Company, 116 NLRB 1552, 1553-1554 (1956); *The Budd Company*, 136 NLRB 1153, 1155-1156 (1962); and *Bulldog Electric Products Company*, 96 NLRB 642, 644 (1951).

The job classification of Network Manager is not a confidential employee position and it will be included in the Professional and Technical bargaining unit.

Accounting/Payroll Technician

The Accounting/Payroll Technician is not a confidential employee. Like the Network Manager, the Accounting/Payroll Technician reports to the Chief Operations Officer for Facilities. As stated previously, the Chief Operations Officer for Facilities serves on the District's negotiation team when it negotiates with SEIU, Local 12. Therefore, the Chief Operations Officer for Facilities formulates, determines and effectuates labor-relations policy for the District.

With regard to the second prong of the test, the Accounting/Payroll Technician does not assist and act in a confidential capacity to a person who formulates, determines and effectuates labor-relations policy and, therefore, she does not meet the second prong of the test. The Accounting/Payroll Technician does not assist with developing labor-relations negotiation materials. She tracks overtime expenditures for the Maintenance and Operations Division and she knows the balance of unexpended overtime funds in the Division's budget. However, such budget information is public information and subject to disclosure under the Missouri Sunshine Law, Sections 610.010 et. seq. RSMo. 2000. Furthermore, her payroll duties and access to Human Resource files do not make her a confidential employee. *Arden Farms*, 117 NLRB 318, 320 (1957); and *RCA Communications, Inc.*, 154 NLRB 34, 37 (1965). Therefore, the job classification of Accounting/Payroll Technician is not a confidential employee position and it will be included in the Professional and Technical bargaining unit.

Coordinator of Community Use Facilities

The Coordinator of Community Use Facilities is not a confidential employee within the

meaning of the Missouri Public Labor Law. The Coordinator of Community Use Facilities also reports to the Chief Operations Officer for Facilities. The Chief Operations Officer for Facilities serves on the District's negotiation team when it negotiates with SEIU, Local 12 and, therefore, he formulates, determines and effectuates labor-relations policy for the District. The first prong of the labor-nexus test is met.

However, based upon the Coordinator of Community Use Facilities' job duties, the second prong of the labor-nexus test is not met in that the Coordinator of Community Use Facilities does not assist and act in a confidential capacity to a person who formulates, determines and effectuates labor-relations policy. The Coordinator of Community Use Facilities has no role in District labor-relations matters. She does receive advance notice of school closings. However, the closure of a school, once approved by the School Board, is public information and subject to disclosure under the Missouri Sunshine Law, Sections 610.010, et. seq., RSMo. 2000. Furthermore, the Coordinator of Community Use Facilities receives part-time clerical support from two of the District's clerical staff. These clerical employees have access to the same school closure information provided to the Coordinator of Community Use Facilities, but the District does not contest the inclusion of the clerical employees in the bargaining unit. Based upon the foregoing, the job classification of Coordinator of Community Use Facilities is not a confidential employee position and it will remain in the Professional and Technical bargaining unit.

Payroll Analyst II

Based upon her current job duties, the Payroll Analyst II is not a confidential employee. As for the first prong of the labor-nexus test, the Payroll Analyst II reports to the District's Payroll Manager. The Payroll Manager has assisted in formulating District negotiation proposals. Additionally, Brenda Thomas, the District's Employee Relations Manager, serves on the District's labor-relations negotiating team and she participates in all labor-relations

negotiations on behalf of the District. Ms. Thomas also assists with the drafting of District negotiation proposals. Brenda Thomas also serves as the grievance-hearing officer at the third step in the employee grievance process. The District's Payroll Manager and the District's Employee Relations Manager clearly formulate, determine and effectuate labor-relations policy for the District.

The inquiry now turns to the second prong of the test labor-nexus test, does the Payroll Analyst II assist and act in a confidential capacity to a person who formulates, determines and effectuates labor-relations policy? Based upon the current job duties of the Payroll Analyst II, the Board concludes that the second prong of the test is not met. Since the Payroll Unit was moved to the Human Resources Department, the Payroll Analyst II has had access to Human Resources files and reviews employee information sheets. Additionally, the Payroll Analyst II performs research regarding grievances. She audits employee payroll records to verify evidence presented at the grievance hearings. She has also been asked to make comparisons between employee's payroll records. If a grievance is decided in the employee's favor and the employee is entitled to additional wages, the Payroll Analyst II processes the payment and writes the check. However, the Payroll Analyst II neither decides grievances nor consults with the District's Employee Relations Manager concerning how grievances should be resolved. Further, the Payroll Analyst II does not assist with formulating or providing information concerning District negotiation proposals. The Payroll Analyst II is, however, located in an area of the Human Resources Department where she may overhear discussions concerning District labor-relations matters.

The fact that the Payroll Analyst II has access to Human Resources files and reviews employee information sheets does not make her a confidential employee. *Arden Farms*, 117 NLRB 318, 320 (1957); and *RCA Communications, Inc.*, 154 NLRB 34, 37 (1965). Additionally, her limited role in grievances does not make the Payroll Analyst II a confidential employee.

See, *Case Corporation*, 304 NLRB 939 (1991); *White Provision Company*, 116 NLRB 1552, 1553-1554 (1956); *The Budd Company*, 136 NLRB 1153, 1155-1156 (1962); and *Bulldog Electric Products Company*, 96 NLRB 642, 644 (1951). Finally, the fact that the Payroll Analyst II may overhear conversations concerning labor-relations matters does not transform her into a confidential employee. See, *Swift & Co.*, 119 NLRB 1556, 1567 (1958). See also, *Heckett Engineering Co.*, 117 NLRB 1395, 1396 (1957); *In the Matter of B.F. Goodrich Company*, 92 NLRB 575, 576 (1950), and *Hughes Tool Company*, 97 NLRB 1107, 1109 (1952).

Based upon the foregoing, the job classification of Payroll Analyst II is not a confidential employee position and it will be included in the Professional and Technical bargaining unit.

Payroll Analyst I's

Likewise based upon their current job duties the Payroll Analyst I's are not confidential employees. The Payroll Analyst I's reports to the District's Payroll Manager. As stated previously, the Payroll Manager has assisted in formulating District negotiation proposals. Additionally, Brenda Thomas, the District's Employee Relations Manager, serves on the District's labor-relations negotiating team and she participates in all labor-relations negotiations on behalf of the District. Ms. Thomas also assists with the drafting of District negotiation proposals. Brenda Thomas also serves as the grievance hearing officer at the third step in the employee grievance process. The District's Payroll Manager and the District's Employee Relations Manager clearly formulate, determine and effectuate labor-relations policy for the District. The District's Payroll Manager and the District's Employee Relations Manager meet the first prong of the labor-nexus test.

However, like the Payroll Analyst II, the job duties of the Payroll Analyst I's do not assist or act in a confidential capacity to a person who formulates, determines and effectuates labor-relations policy. Therefore, the second prong of the labor-nexus test is not met with regard to the Payroll Analyst I's. The job duties of the Payroll Analyst I's are substantial similar to those

of the Payroll Analyst II. The Payroll Analyst I's have access to Human Resources files and review employee information sheets. The Payroll Analyst I's perform research regarding grievances. However, the Payroll Analyst I's neither decide grievances nor consult with the District's Employee Relations Manager concerning the resolution of grievances. The Payroll Analyst I's do not assist with formulating or providing information concerning District negotiation proposals. However, the Payroll Analyst I's are located in an area of the Human Resources Department where they may overhear discussions concerning District labor-relations matters.

Since the job duties of the Payroll Analyst I's are virtually identical to those of the Payroll Analyst II, the Board's reasoning with regard Payroll Analyst II applies equally to the Payroll Analyst I's. Therefore, the job classification of Payroll Analyst I is not a confidential employee position and the job classification will be included in the Professional and Technical bargaining unit.

Based upon the foregoing, the job classifications of Food Service Financial Analyst, Network Manager, Accounting/Payroll Technician, Coordinator of Community Use Facilities, Payroll Analyst II, and Payroll Analyst I are not confidential employee positions and, therefore, the job classifications will be included in the Professional and Technical bargaining unit.

Burden of Proof

Finally, in the hearing on March 26, 2001 and March 27, 2001, the District presented evidence on only seven employee job classifications. As the Petitioner, the District bears the burden of proof on those seven job classifications. *Central County Emergency 911, International Association of Firefighters Local 2665*, 967 S.W.2d 696, 699 (Mo. App. W.D. 1998). However, the Union now wishes to present evidence on an additional fifteen employee job classifications. Additionally, the Union maintains that the District, as Petitioner, will bear the burden of proof as to those additional fifteen employee job classifications. Pursuant to the Chairman's request, both parties briefed the issue.

As an administrative agency, the Board may take official notice of matters of which a Court may take judicial notice. See, Section 536.070(6) RSMo. 2000. “[A] Court on its own motion, may take judicial notice of its own records in prior proceedings which are between the same parties on the same basic facts involving the same general claims for relief.” *State v. Dillon*, 41 S.W.3d 479, 482 (Mo. App. E.D. 2001). Therefore, the Board may take official notice of its own records with regard to a prior petition to clarify the bargaining unit in question. Compare, *Conley v. Treasurer of Missouri*, 999 S.W.2d 269 (Mo. App. E.D. 1999). The Board, on its own motion, takes official notice that there were originally two unit clarification petitions filed concerning the District’s Professional and Technical bargaining unit. On December 4, 2000, the Union filed a unit clarification petition (Public Case No. UC 2001-020) concerning the District’s Professional and Technical bargaining unit. As Petitioner, the Union would have bore the burden of proof with regard to the employee job classifications raised in its petition. *Central County Emergency 911, supra*. On December 5, 2000, the District filed its unit clarification petition herein concerning the same bargaining unit. As stated above, the District bears the burden of proof with regard to the employee job classifications raised in the petition. *Id.* The two petitions could have been consolidated for hearing and decision. See, *International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 1107 v. Parkway School District*, Public Case No. UC 98-039 and UC 98-040 (SBM 1998). However, the Union withdrew its petition in Public Case No. UC 2001-020, and on January 18, 2001, the Board issued its order dismissing that case. The Union is now attempting to resurrect the issues raised in its withdrawn petition and shift the burden of proof with regard to the fifteen employee job classifications to the District. This, the Board will not permit. Therefore, the Board will issue its decision concerning the seven job classifications for which evidence was presented at the hearing. If necessary, the parties may file another unit clarification petition with the Board concerning the additional fifteen employee job classifications.

ORDER

The State Board of Mediation finds that the Food Service Financial Analyst and the Staging/Move Coordinator are not supervisors within the meaning of the Missouri Public Sector Labor Law. The State Board of Mediation further finds that the Food Service Financial Analyst, the Network Manager, the Accounting/Payroll Technician, the Coordinator of Community Use Facilities, the Payroll Analyst II, and the Payroll Analyst I are not confidential employees within the meaning of the Missouri Public Sector Labor Law. The State Board of Mediation therefore holds that the Food Service Financial Analyst, the Staging/Move Coordinator, the Network Manager, the Accounting/Payroll Technician, the Coordinator of Community Use Facilities, the Payroll Analyst II, and the Payroll Analyst I are included in the bargaining unit established by the Board in Public Case No. R 96-010.

Signed this 13th day of July, 2001.

STATE BOARD OF MEDIATION

/s/ John A. Birch
John A. Birch, Chairman

(SEAL)

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Robert Douglass
Robert Douglass, Employer Member